

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

DONALD R. TURNER, JR.,)
Petitioner,)
v.) Case No. 1:16-CV-268 JAR
UNITED STATES OF AMERICA,)
Respondent.)

MEMORANDUM AND ORDER

This matter is before the Court on Petitioner's Motion to Strike (Doc. No. 20); Motion Seeking Leave to Amend (Doc. No. 21); Request for Appointment of Counsel (Doc. No. 23); Motion for Leave to Supplement (Doc. No. 24); and Request for Leave to File Notice of Supplemental Authority (Doc. No. 25).

Motion to strike

Petitioner asks that his Amended Resistance to Government's Response (Doc. No. 11); Additional Authority (Amended Resistance) to Government's Response (Doc. No. 13); and Memorandum of Law in Light of 28 U.S.C. § 2255 (Doc. No. 16) be stricken. Petitioner states it was not his intent to replace any of the arguments asserted in his original § 2255 petition (Doc. No. 10), nor abandon any claim asserted therein by way of these filings. The Court interprets this as a request to permit Petitioner to withdraw these filings, which will be granted.

Motion for leave to amend

Petitioner seeks to amend his § 2255 petition to include an additional issue and has included with his motion a proposed amended pleading that includes each and every claim he wishes to bring. The Court will grant Petitioner's motion. Petitioner is advised that his amended

complaint is now the operative complaint in this matter. The Court will direct the Government to file a response to Petitioner's additional ground for relief in Issue Eight of the amended petition.

Request for appointment of counsel

After review of the record in this matter, the Court declines to appoint counsel to Petitioner at this time. There is no constitutional or statutory right to appointed counsel in civil cases. Nelson v. Redfield Lithograph Printing, 728 F.2d 1003, 1004 (8th Cir. 1984). In determining whether to appoint counsel, the Court considers several factors, including (1) whether the petitioner has presented nonfrivolous allegations supporting his or her prayer for relief; (2) whether the petitioner will substantially benefit from the appointment of counsel; (3) whether there is a need to further investigate and present the facts related to the petitioner's allegations; and (4) whether the factual and legal issues presented by the action are complex. See Johnson v. Williams, 788 F.2d 1319, 1322-23 (8th Cir. 1986); Nelson, 728 F.2d at 1005. After considering these factors, the Court finds the facts and legal issues involved in this action are not so complicated that the appointment of counsel is warranted at this time. As such, Petitioner's motion for appointment of counsel will be denied, without prejudice.

Motion for leave to supplement

Petitioner seeks leave to supplement his reply to Section B of the Government's response to his § 2255 Petition. The Court will grant Petitioner's motion.

Request for leave to file supplement

In his latest filing, Petitioner requests leave to file supplemental authority in support of his § 2255 petition. Upon consideration, the Court will grant his request as directed to his now amended petition.

Accordingly,

IT IS HEREBY ORDERED that Petitioner's Motion to Strike [20], construed as a motion to withdraw, is **GRANTED**.

IT IS FURTHER ORDERED that Petitioner's Motion Seeking Leave to Amend [21] is **GRANTED**. The Clerk of Court shall detach and docket the amended petition, which was submitted as an attachment to the motion for leave.

IT IS FURTHER ORDERED that Petitioner's Request for Appointment of Counsel [23] is **DENIED without prejudice**.

IT IS FURTHER ORDERED that Petitioner's Motion for Leave to Supplement [24] is **GRANTED**.

IT IS FURTHER ORDERED that Petitioner's Request for Leave to File Notice of Supplemental Authority [25] is **GRANTED**.

IT IS FINALLY ORDERED that within thirty (30) day of the date of this Order, Respondent shall file its response to the additional claim raised in the amended § 2255 petition. Petitioner shall have twenty-one (21) days to reply.

Dated this 14th day of August, 2019.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE